JAN 3 1 2007

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, DC 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 5712
DATE COMPLAINT FILED: March 7, 2006
DATE OF NOTIFICATION: March 14, 2006
LAST RESPONSE RECEIVED: September 20, 2006
DATE ACTIVATED: April 12, 2006

EXPIRATION OF S.O.L.: March 20, 2011

COMPLAINANT:	Art Torres
RESPONDENTS:	Senator John McCain Governor Arnold Schwarzenegger
RELEVANT STATUTES:	2 U.S.C. § 441a(a) 2 U.S.C. § 441i(e)(1) 2 U.S.C. § 441i(e)(3) 11 C.F.R. § 300.2(m) 11 C.F.R. § 300.61 11 C.F.R. § 300.62 11 C.F.R. § 300.64
INTERNAL REPORTS CHECKED:	Federal Disclosure Reports
FEDERAL AGENCIES CHECKED:	None

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I. BACKGROUND

This matter concerns a fundraising solicitation sent in connection with an event co-hosted by Californians for Schwarzenegger 2006, Governor Arnold Schwarzenegger's gubernatorial re-election committee, and the California Republican Party, a State party committee. The face of the solicitation features photographs of Senator McCain and Governor Schwarzenegger and the words "SPRING INTO ACTION" "with Governor Arnold Schwarzenegger and Special Guest Senator John McCain." The same words (absent the Governor's first name) also appear on the top of the second page, under which are boxes for donors to check donation amounts ranging from $1,000 (for an individual ticket) to $100,000 (for two seats at the head table with the Governor, a table of ten with premiere seating, tickets to the host committee reception, and photos with the Governor). *See* Attachment 1. At the bottom of this page, as well as on the third and final page of the solicitation, is a boxed disclaimer stating:

> We are honored to have Senator John McCain as our Speaker for this event. However, the solicitation for funds is being made only by Californians for Schwarzenegger and the California Republican Party. In accordance with federal law, Senator McCain is not soliciting individual funds beyond [the] federal limit, and is not soliciting funds from corporations or labor unions.

The complainant alleged that Senator McCain violated the "soft money" prohibitions enacted in the Bipartisan Campaign Reform Act ("BCRA"), specifically, 2 U.S.C. § 441i(e) and 11 C.F.R. § 300.62, which prohibit Federal candidates and officeholders from, among other things, soliciting funds in connection with any non-Federal election unless the funds are in amounts that do not exceed the Federal Election Campaign Act of 1971, as amended (the "Act's"), contribution limits and do not come from prohibited sources. In response to the complaint and a follow-up request for additional information, counsel for McCain stated that a

representative of Senator McCain had reviewed a draft of the invitation and had taken "every step he believed necessary to ensure that the correct disclaimer was on the invitation, including seeking review by legal counsel." *See* McCain Response, at 5-6; McCain Supplemental Response (Attachment 4), at 1.

As explained below, we conclude that under the best reading of the Commission's Advisory Opinions interpreting BCRA's soft money prohibitions, a Federal officeholder or candidate may not consent to appear in a solicitation which specifically asks for contributions in amounts above the Federal limits or from prohibited sources, despite the appearance of a disclaimer purporting to limit the Federal candidate's solicitation to Federally permissible amounts and sources. However, the precise facts presented in this matter were not specifically raised and analyzed in any of the pertinent Advisory Opinions. To the extent the questions raised in this matter were addressed in the Advisory Opinions, any guidance that might be drawn from them is not as clear as it might be and could be misread. We therefore believe that the appropriate course is for the Commission to take this opportunity to clarify its interpretation of the law for future matters, and to exercise its prosecutorial discretion to dismiss the instant complaint.

The additional allegation in the complaint that Governor Schwarzenegger aided and abetted Senator McCain's alleged violations fails at this threshold stage because no liability exists for aiding and abetting the violations at issue here, and there is no other basis for finding liability against Gov. Schwarzenegger.

II. DISCUSSION

A. SENATOR McCAIN

Under BCRA, Federal officeholders and candidates for Federal office may not solicit, receive, direct, transfer or spend funds in connection with either Federal or non-Federal elections, unless the funds comply with Federal contribution limits, source restrictions, and reporting requirements. 2 U.S.C. §§ 441i(e)(1)(A) and (B); 11 C.F.R. §§ 300.61 and 300.62. Specifically, a Federal officeholder or candidate, whether in connection with a Federal or non-Federal election, may not raise funds from individuals that exceed the current limit of $2,300 per election per candidate,[1] and may not raise funds from corporations or labor organizations.[2] At all times relevant to this matter, the Commission defined the term "solicit" to mean "to ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value whether the contribution, donation, transfer of funds, or thing of value, is to be made or provided directly, or through a conduit or intermediary." 11 C.F.R. § 300.2(m).[3]

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[1] At the time of the alleged violation, the individual contribution limit was $2,100.

[2] A Federal officeholder or candidate for Federal office may, however, attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party, without restriction or regulation. 2 U.S.C. § 441i(e)(3); 11 C.F.R. § 300.64. In the Explanation and Justification for 11 C.F.R. § 300.64, the Commission noted that the rule "is carefully circumscribed and only extends to what Federal candidates and officeholders say at the State party fundraising events themselves ... the regulation does not affect the prohibition on Federal candidates and officeholders from soliciting non-Federal funds for State parties in fundraising letters, telephone calls, or any other fundraising appeal made before or after the fundraising event. Unlike oral remarks that a Federal candidate or officeholder may deliver at a State party fundraising event, when a Federal candidate or officeholder signs a fundraising letter or makes any other written appeal for non-Federal funds, there is no question that a solicitation has taken place that is restricted by 2 U.S.C. § 441i(e)(1)." 70 Fed. Reg. 37,649 (June 30, 2005), at 37,653.

[3] On March 13, 2006, seven days after the complaint in this matter was filed, the Commission revised the definition of "solicit" with an effective date of April 19, 2006. *See* 71 Fed. Reg. 13,926 (Mar. 28, 2006). This rulemaking was in response to the decision of the United States Court of Appeals for the District of Columbia Circuit in *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005), *reh'g en banc denied* (Oct. 21, 2005). The conclusions in this Report would be unaffected even if the new rules had applied. Additionally, in adopting a revised definition of "solicit," the Commission specifically declined to make changes to the principles set forth in the Advisory Opinions that are

The Commission has interpreted this prohibition in the context of particular facts presented in several Advisory Opinions regarding Federal candidates' and officeholders' participation in fundraising events where donations outside of Federal contribution limits and source restrictions were sought. *See* AO 2003-03 (*Cantor*), AO 2003-36 (*Republican Governors Association* ("*RGA*")); *see also* AO 2003-37 (*Americans for a Better Country* ("*ABC*")) (superseded by 11 C.F.R. § 106.6 on Nov. 23, 2004).[4]

The facts addressed in the *Cantor* Opinion relate to the appearance of Federal candidates and officeholders in publicity preceding an event at which funds would be raised for state candidates. Specifically, the requestors noted that

> [T]hey would like Representative Cantor to: (1) attend campaign events, including fundraisers, (2) solicit financial support, and (3) do so orally or in writing. Congressman Cantor would like to participate in their campaigns in this manner. Requestors ask for guidance from the Commission about the degree to which Representative Cantor, as a Federal officeholder and candidate, may engage in State and local election activities.

In response to the specific question asking whether the Congressman's attendance at the event may be publicized and whether he may participate in the event as a featured guest, the Commission responded:

> Section 441i(e)(1) and section 300.62 do not apply to publicity for an event where that publicity does not constitute a solicitation or direction of non-Federal funds by a covered person, nor to a Federal candidate or officeholder merely because he or she is a featured guest at a non-Federal fundraiser.

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applicable here or to initiate a rulemaking to address the issues based on testimony that the principles articulated in these Advisory Opinions are well-understood and that "the community is complying with them." *See* 71 Fed. Reg. 13,926, at 13,930-31.

[4] Counsel for Senator McCain properly notes, in response to the complaint in this matter, that Senator McCain is "in the same position as the requestors" in *Cantor* and *RGA* and therefore may rely on the Advisory Opinions without being subject to sanction. *See* 2 U.S.C. § 437f (c).

> In the case of publicity, the analysis is two-fold: First, whether the publicity for the event constitutes a solicitation for donations in amounts exceeding the Act's limitations or from sources prohibited from contributing under the Act; and second, whether the covered person approved, authorized, or agreed or consented to be featured or named in, the publicity. If the covered person has approved, authorized, or agreed or consented to the use of his or her name or likeness in publicity, and that publicity contains a solicitation for donations, there must be an express statement in that publicity to limit the solicitation to funds that comply with the amount limitations and source prohibitions of the Act.

AO 2003-03 (Response to Question 3.c) (citations omitted).

The Commission revisited the issue of covered persons' participation as featured guests in *RGA*. The specific question there was:

> 1.b. May a covered individual participate [as a featured guest at an RGA fundraising event] by having his name appear on written solicitations for an RGA fundraising event as the featured guest or speaker?

After restating the two-step analysis from the *Cantor* Advisory Opinion, the Commission answered:

> A Federal candidate may not solicit funds in excess of the amount limitation or in violation of the source prohibitions of the Act. If the covered individual approves, authorizes, or agrees or consents to be named or featured in a solicitation, ***the solicitation must contain a clear and conspicuous express statement that it is limited to funds that comply with the amount limits and source prohibitions of the Act.***

AO 2003-36 (Response to Question 1.b) (emphasis added).

The facts in this MUR include a solicitation reviewed and approved by Senator McCain (or his representative).[5] Under such circumstances, *Cantor* states that "an express statement . . . limit[ing] the solicitation to funds that comply with the amount limitations and source

[5] Although Senator McCain's initial response to the complaint was silent on this question, his supplemental response states that the Executive Director of his leadership PAC and legal counsel reviewed and approved the invitation, including the disclaimers. *See* Affidavit of Craig Goldman (part of McCain Supplemental Response (Attachment 4), at 1-2.

prohibitions of the Act" is required. Likewise, the *RGA* opinion seems to reiterate the need for and the sufficiency of a disclaimer ("... the solicitation must contain a clear and conspicuous express statement that it is limited to funds that comply with the amount limits and source prohibitions of the Act."). The invitation at issue in this matter includes such a statement.

Not surprisingly, then, in response to the complaint in this matter, Senator McCain's counsel argues that the express statement on the invitation that Senator McCain is not soliciting funds in excess of Federal limits or source prohibitions "explicitly meet" the requirements set forth in the Commission's Advisory Opinions cited above. This argument appears to be based upon counsel's interpretation of *Cantor* that pre-event publicity featuring a covered person, whether soliciting non-Federal funds or otherwise, simply requires an express statement or disclaimer stating that the covered person is not asking for funds in excess of Federal limits or from prohibited sources.

However, additional language in footnote 9 of *RGA* suggests that a disclaimer may not sufficiently inoculate a covered person who approves his or her appearance in a solicitation explicitly seeking funds beyond the limits and prohibitions of the Act. That footnote appears in response to RGA's question 1.b. (*see supra*, p. 6) and purports to clarify potential confusion arising from the *Cantor* Opinion. In this footnote, the Commission explained that such a statement is inadequate where, as here, the publicity or other written solicitation explicitly asks for funds in excess of Federal limits or from prohibited sources:

> Although Advisory Opinion 2003-03 [*Cantor*] might be read to mean that a disclaimer is required in publicity or other written solicitations that explicitly ask for donations 'in amounts exceeding the Act's limitations and from sources prohibited from contributing under the Act,' that was not the Commission's meaning. The Commission wishes to make clear that the covered individual may

> not approve, authorize, agree, or consent to appear in publicity that would constitute a solicitation by the covered person of funds that are in excess of the limits or prohibitions of the Act, regardless of the appearance of such a disclaimer.

AO 2003-36, at n.9.

Having "clarified" the meaning of *Cantor* in a footnote to question 1.b., the Commission answered RGA's second question,[6] using language that again suggested a disclaimer would negate any potential violation. In answering Question 2, the Commission stated:

> No, the covered individual may not so participate under those circumstances. The requirements described above in response to questions 1.a, 1.b, and 1.c are applicable to the situations described in question 2, *including the need for the notice that the covered individual is asking for funds only up to the applicable limits of the Act, and is not asking for funds outside the limitations or prohibitions of the Act.*

Id. at 7 (emphasis added). Thus, *RGA* appears to provide inconsistent guidance on the effect of a disclaimer in a solicitation.

Subsequently, the Commission again considered the involvement of Federal officeholders or candidates in fundraising for non-Federal elections in the *ABC* Advisory Opinion. In *ABC*, which primarily addressed the allocation of expenses by nonconnected committees and was superseded when the Commission enacted new regulations regarding the allocation of certain expenses (*see* 69 Fed. Reg. 68,056, 68,063 (Nov. 23, 2004)), the requestor asked if Federal officeholders or candidates could be named as "honored guests" or "featured speakers" at

[6] Question 2 asked, "With respect to the RGA Conference Account, may a covered individual sign or appear on written solicitations, such as signing invitation letters, or appear as a featured guest or speaker at a fundraising event, *where the donations solicited exceed the Act's amount limits or are from prohibited sources* but the solicitation *does not include a notice* that the covered individual is not raising funds outside the amount limits and source prohibitions of the Act?" AO 2003-36, at 7 (emphasis added).

fundraising events for ABC's non-Federal account. The Commission, citing to both the *Cantor* and *RGA* Advisory Opinions, stated:

> [A] candidate's consent or agreement to be mentioned in an invitation as an honored guest, featured speaker or host, where that invitation is a solicitation, constitutes a solicitation by the candidate. Thus, if a candidate agrees or consents to be named in a fundraising solicitation as an honored guest, featured speaker or host, or if the invitation constitutes a solicitation for any other reason, then the solicitation must contain a clear and conspicuous statement that the *entire solicitation* is limited to funds that comply with the amount limits and source prohibitions of the Act.

AO 2003-37, at 18 (emphasis added).[7]

Notwithstanding the apparent inconsistency in *RGA*, we conclude that the best reading of these Advisory Opinions, when taken together and in light of the letter and spirit of the "soft money" prohibitions in BCRA, is as follows:

1. A Federal officeholder or candidate may appear in written solicitations in connection with the election of state candidates, so long as the solicitation is expressly and entirely limited to amounts and from sources that comply with the Act's contribution limits and source prohibitions.
2. If a written solicitation in connection with the election of state candidates asks for donations, but does not specify an amount, a Federal officeholder or candidate may appear in the written solicitation provided it contains express language stating that the Federal officeholder or candidate is only soliciting

[7] Although AO 2003-37 (*ABC*) was superseded by new regulations addressing certain allocation rules, we believe the analysis as it pertained to Federal officeholder/candidate involvement in fundraising for non-Federal elections is sound.

amounts that comply with the Act's contribution limits and source prohibitions.

3. However, if the Federal candidate or officeholder appears in a written solicitation in connection with the election of state candidates that explicitly asks for donations of funds in amounts exceeding the Act's contribution limits or from prohibited sources, then a Federal officeholder or candidate may not appear in the solicitation regardless of whether there is an express statement limiting the solicitation to funds that comply with the amount limits and source prohibitions of the Act.[8]

The solicitation at issue in this matter sought donations from "individuals, businesses, corporations and general PACs" in specific amounts of $1,000 (Individual Ticket), $10,000 (Bronze Sponsor), $25,000 (Silver Sponsor), $50,000 (Gold Sponsor), and $100,000 (Platinum Sponsor). *See* Attachment 1. With the exception of the $1,000 box, the amounts requested exceed the Federal contribution limits for individuals per election, and the solicitation targets corporations, which are prohibited from making contributions under the Act. *See* 2 U.S.C. §§ 441a and 441b.

[8] An exception to this bar exists for situations where a Federal officeholder or candidate is "merely mentioned" in the text of a solicitation. Such "mere mention" would not, in and of itself, constitute a solicitation of non-Federal funds by the Federal officeholder or candidate. *See* AO 2003-36, at 6. At the open meeting at which the Commission discussed *RGA*, Commissioners stressed that this was a narrow exception that would cover, for example, instances where a state candidate sought and received permission from a U.S. Senator to refer in a solicitation to the fact that he or she worked as a staff member to the Senator. *See* Audio Tape Discussion of AO 2003-36 (Jan. 7, 2004). In any event, the prominent references to Senator McCain as "Special Guest" and "Speaker" for this event go well beyond "mere mention," and an officeholder's appearance in such capacities is specifically addressed in AO 2003-36.

Pursuant to our reading of the statute and applicable Advisory Opinions, it therefore would run afoul of BCRA's prohibitions on soliciting non-Federal funds for Senator McCain's name or likeness to appear in this invitation as a featured guest or speaker since he approved, authorized, agreed, or consented to be featured, or named in, the invitation. *See supra*, pp. 2-3. Moreover, the disclaimers in the solicitation, noting that "the solicitation for funds is being made only by Californians for Schwarzenegger and the California Republican Party" and that "[i]n accordance with Federal law, Senator McCain is not soliciting individual funds beyond Federal limit, and is not soliciting funds from corporations or labor unions," do not suffice to divorce the Senator from the solicitation. *See supra*, pp. 4-8.

Nonetheless, while we believe the foregoing analysis reflects the best synthesis of the statute and the Commission's Advisory Opinions,[9] and therefore would provide a basis for going forward in this matter, other factors counsel against proceeding at this time. Generally, the

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[9] Our analysis may reflect the regulated community's understanding as well. In the Commission's rulemaking on the definitions of "solicit" and "direct," and in its earlier rulemaking on candidate solicitations at state, district, and local party fundraising events, commenters claimed that they understood the guidance in *Cantor* and *RGA* . *See* Definitions of "Solicit" and "Direct," 71 Fed. Reg. 13,931. The Campaign Legal Center, whose President and General Counsel represents Senator McCain in this matter, correctly summarized the relevant portions of *RGA* through an example apparently like the solicitation in this matter, and concluded that such a solicitation would violate BCRA. The Campaign Legal Center's website explains:

> The Advisory Opinion also sets forth rules for RGA written solicitations of funds featuring Federal candidates and officeholders, among other things clarifying that RGA solicitation materials in which a Federal officeholder or candidate has authorized his or her appearance may not ask for donations from Federally impermissible sources or exceeding Federal amount limitations (e.g., the solicitation cannot ask for a $50,000 contribution from individuals but then indicate that the Federal officeholder is only asking for $5,000 donations from individuals).

FEC Issues Advisory Opinion 2003-36 on Fundraising for RGA (*available at* http://www.campaignlegalcenter.org/FEC-129.html (Jan. 12, 2004)) (Attachment 2). *See also* The Republican Governors' Opinion Move on What Candidates Can, or Cannot, Do with "527s" (*available at* http://www.[illegible] (Jan. 13, 2004)) (Attachment 3). Unlike the invitation in this MUR, however, the Campaign Legal Center's illustration apparently does not contain a disclaimer as none is mentioned

specific facts present a novel issue that is arguably complicated by the Advisory Opinions that might otherwise have provided some guidance on the particular scenario. More specifically, the precise question raised in this MUR was not explicitly asked by the requestors in those prior Advisory Opinions. Although the issue presented in this MUR seems to be addressed in a footnote in the *RGA* Opinion purporting to clarify that a "disclaimer" by the officeholder or candidate would be inadequate if he or she consented to appear in pre-event publicity that explicitly asked for funds outside of Federal contribution limits and source restrictions, the *RGA* Opinion also suggests later, in response to another question (Question 2), that a covered individual could appear in such a solicitation provided the solicitation included a disclaimer. Further, although the question is also touched on in the course of answering a request regarding proper allocation in the *ABC* Opinion, that Opinion has been expressly superseded. *See* 69 Fed. Reg. 68,056, 68,063 (Nov. 23. 2004).

Based on the above, we believe it advisable for the Commission to take this opportunity to clarify its interpretation of BCRA's soft money prohibitions, first set forth in the several Advisory Opinions discussed herein, and, in recognition of the potential for misinterpretation of the Advisory Opinions, exercise its prosecutorial discretion and dismiss the allegation that Senator John McCain violated 2 U.S.C. § 441i(e) and 11 C.F.R. § 300.62. We further recommend that the Commission approve the attached Factual and Legal Analysis ("FLA") supporting the recommended actions. That FLA will be placed on the public record upon closure of the matter, and the analysis contained in it, particularly the principles set forth at pp. 7-9 of Attachment 5, would then serve to clarify the Commission's interpretation of the law in this area.

We also recommend the Commission find no reason to believe that Senator McCain violated 2 U.S.C. § 441a(a) and 11 C.F.R. § 300.61 because the complaint does not contain any factual support for the allegation that he personally made any contributions in excess of the limits set forth in 2 U.S.C. § 441a(a) nor solicited, received, directed, transferred, spent, or disbursed funds in connection with an election for Federal office, including funds for any Federal Election Activity, as prohibited under 11 C.F.R. § 300.61.

B. GOVERNOR SCHWARZENEGGER

The Act does not impose liability for aiding and abetting another individual or entity in violating 2 U.S.C. § 441i(e).[10] We therefore recommend that the Commission dismiss the allegation that Governor Schwarzenegger violated the Act by aiding and abetting Senator McCain in raising donations in amounts exceeding the contribution limits of the Act.

III. RECOMMENDATIONS

1. Dismiss the allegation that Senator John McCain violated 2 U.S.C. § 441i(e) and 11 C.F.R. § 300.62;

2. Find no reason to believe that Senator John McCain violated 2 U.S.C. § 441a(a) or 11 C.F.R. § 300.61, and approve the attached Factual and Legal Analysis;

3. Dismiss the allegation that Governor Arnold Schwarzenegger violated the Act by aiding and abetting Senator McCain in violating 2 U.S.C. § 441i, and approve the attached Factual and Legal Analysis;

4. Approve the appropriate letters; and

[10] The Commission has unsuccessfully sought amendment to the Act to make it a violation for anyone to aid and abet another party in violating the Act. *See, e.g.*, 2005 Legislative Recommendations (Mar. 25, 2005).

5. Close the file.

1/31/07
Date

Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel for Enforcement

Ann Marie Terzaken
Assistant General Counsel

Adam Schwartz
Attorney

Attachments
1. Invitation to March 20, 2006 campaign fundraising event
2. FEC Issues Advisory Opinion 2003-36 on Fundraising for RGA
3. The Republican Governors' Opinion: More on What Candidates Can, or Cannot, Do with "527s"

ATTACHMENT 1

SPRING INTO ACTION

with Governor Arnold Schwarzenegger

and Special Guest Senator John McCain

Platinum

Adele & Beny Alagem
Avery & Andy Barth
Kathy & Frank Baxter
Bill Bloomfield, Jr.
Tina & Rick Caruso
Kelly & Robert Day
Joan & John Hotchkis
Catherine & John B. Kilroy, Jr.
The New Majority Los Angeles
Ashley & Dan S. Palmer, Jr.
Margie & Jerry Perenchio
William A. Robinson
Faye & Alex Spanos
Terry Semel

Gold

James Cameron
Jami & Klaus Heidegger
Mike McGee & Olga Castellanos-McGee
Tawny & Jerry Sanders
Greg Stubblefield

Silver

Michelle & Tony Anderson
Donna Tuttle & David Elmore
Dave Helwig
Michael R. Lombardi
Eva & Marc Beern
Betty & Joe Weider

Bronze

Michelle & Hamid Baher
Ruth & Jake Bloom
Linda & Jerry Bruckheimer
Peter Chernin
Sarnie & Brett Davis
Barry Fisher
Erica & Roger Greaves
Jeri & Ken Harman
Fritz Hitchcock
Robert W. Huston
Vicki & Jimmy Iovine
Sanaz & Saeed Kashani
Gerald L. Katell
Bliss & Patrick Knapp
Suzanne & Allen M. Lawrence
Paula Kent-Meehan
Nancy & Robert Philibosian
David G. Price
George Schaeffer
Cindy & Sandy Sibal
Sheila & Robert Snukal
Mimi Song
Gavin Hachiya Wasserman

Spring Into Action

with

Governor Arnold Schwarzenegger

and Special Guest

Senator John McCain

at

The Beverly Hilton
9876 Wilshire Boulevard
Beverly Hills

Monday, March 20, 2006

5:30 General Reception and Silent Auction
6:00 Host Committee Reception
7:00 Dinner

ATTACHMENT 1
Page 2 of 3

Business Attire

Contact Gina Block or Renee Croce
Tel: 310-450-2117 Fax: 310-450-1761

We are honored to have Senator John McCain as our Speaker for this event. However, the solicitation for funds is being made only by Californians for Schwarzenegger and the California Republican Party. In accordance with federal law, Senator McCain is not soliciting individual funds beyond federal limit, and is not soliciting funds from corporations or labor unions.

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"SPRING INTO ACTION"
with GOVERNOR SCHWARZENEGGER
and Special Guest SENATOR JOHN MCCAIN
MONDAY, MARCH 20, 2006 *at* THE BEVERLY HILTON

I AGREE TO GIVE/RAISE:

☐ **PLATINUM SPONSOR:** $100,000 ($44,600 TO CFSOS PLUS $55,400 TO CRP)
HEAD TABLE SEATING WITH GOVERNOR FOR 2 PEOPLE, 1 TABLE OF 10 WITH PREMIERE SEATING, 12 TICKETS FOR THE HOST COMMITTEE RECEPTION, 6 PHOTOS WITH THE GOVERNOR (2 PEOPLE PER PHOTO)

☐ **GOLD SPONSOR:** $50,000 ($44,600 TO CFSOS PLUS $5,400 TO CRP)
HEAD TABLE SEATING WITH GOVERNOR FOR 1 PERSON, 1 TABLE OF 10 WITH PREMIERE SEATING, 6 TICKETS FOR THE HOST COMMITTEE RECEPTION, 3 PHOTOS WITH THE GOVERNOR (2 PEOPLE PER PHOTO)

☐ **SILVER SPONSOR:** $25,000 ($[illegible] TO CFSOS PLUS $2,750 TO CRP)
1 TABLE OF 10 WITH PREMIERE SEATING, 4 TICKETS FOR THE HOST COMMITTEE RECEPTION, 2 PHOTOS WITH THE GOVERNOR (2 PEOPLE PER PHOTO)

☐ **BRONZE SPONSOR:** $10,000 (TO CFSOS)
1 TABLE OF 10, 2 TICKETS FOR THE HOST COMMITTEE RECEPTION, 1 PHOTO WITH THE GOVERNOR (2 PEOPLE PER PHOTO)

☐ **INDIVIDUAL TICKET(S):** $1,000 (TO CFSOS)
- PLEASE RESERVE _____ TICKET(S) AT $1,000 EACH

☐ I/WE ARE UNABLE TO ATTEND BUT WILL CONTRIBUTE $ _____ TO CSFOS.

THE FOLLOWING INFORMATION IS REQUIRED:

NAME: _____ EVENING: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

PHONE: _____ FAX NUMBER: _____

E-MAIL ADDRESS: _____

OCCUPATION: _____ RETIRED: _____

EMPLOYER: _____

AMOUNT OF CONTRIBUTION TO CFSOS: $ _____ AMOUNT OF CONTRIBUTION TO CRP: $ _____

CREDIT CARD CONTRIBUTIONS: ☐ MASTERCARD ☐ VISA ☐ AMERICAN EXPRESS

CREDIT CARD #: _____ EXPIRATION DATE: _____
IF THIS IS A CORPORATE CARD, BY LAW IT WILL BE CONSIDERED A CORPORATE DONATION.

NAME AS IT APPEARS ON THE CARD: _____

IS THIS A CORPORATE CARD? ☐ YES ☐ NO IF YES, CORPORATION NAME: _____

BILLING ADDRESS (IF DIFFERENT): _____

AUTHORIZED SIGNATURE (MUST BE THE SAME AS NAME ON THE CARD): _____

CONTRIBUTIONS TO EACH COMMITTEE MUST BE MADE BY SEPARATE CHECKS AND MAILED TO:

CALIFORNIANS FOR SCHWARZENEGGER 2006	CALIFORNIA REPUBLICAN PARTY
TAX ID [illegible] FPPC #1251588	TREASURER *STATE ID 0810169 FEDERAL ID #C00148585

C/O GINA BLOCK, 3110 MAIN STREET, SUITE 225, SANTA MONICA, CA 90405 · PHONE 310-450-2117
OR YOU MAY FAX THIS FORM TO 310-450-1761

Californians for Schwarzenegger 2006 Contributions to Californians for Schwarzenegger are not deductible for federal income tax purposes. This solicitation raises funds for Governor Schwarzenegger's re-election in 2006. The maximum [illegible] to $44,600 ($22,300 for the primary and $22,300 for the general election). A contributor may contribute to both the primary and general elections and may write a single check. All contributions received prior to the primary election will be designated for the primary election up to the contributor's contribution limit. Any contributions received from contributors [illegible] will be designated for the general election. Individuals, businesses, corporations and labor unions may contribute to CSFOS. Contributions from foreign nationals who are not lawfully admitted for permanent residence will not be accepted. Foreign Nationals are prohibited from making contributions in this committee, unless they have permanent residency status in the United States of America. Spouses and adult children may each give $44,600 by separate check signed by the spouse or adult child. Please contribute separate checks or credit card authorizations.

California Republican Party Contributions to California republican causes and individual federal republican candidates are prohibited. There is no limit on contributions to CRP. Corporate contributions will be used in California state elections. Individual contributions will be used in both federal and California state elections and may also be made in any amount. Contributions to CRP will be allocated as follows: up to $37,500 per calendar year for direct state candidate support. Any amount in excess of $37,500 will be used for permissible non-direct candidate support purposes. Such contributions may also be used for federal levin account purposes, up to $10,000 per individual, corporate or PAC donor.

We are honored to have Senator John McCain as our Speaker for this event. However, the solicitation for funds is being made only by Californians for Schwarzenegger and the California Republican Party. In accordance with federal law, Senator McCain is not soliciting individual funds beyond federal limits, and is not soliciting funds from corporations or labor unions.

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ATTACHMENT 1
Page 3 of 3

ATTACHMENT 2

THE CAMPAIGN LEGAL CENTER

...erest in ...and media law"

CLC Blog
BCRA/McCain-Feingold
Court Cases of Interest
FEC Proceedings
Media Policy Program
IRS Proceedings
Ethics in Government
Redistricting
Legislation
Weekly Reports
Press Releases
Articles of Interest
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FEC PROCEEDINGS

FEC: FEC Proceedings and Legal Center Comments by Topic: 527 Organizations and "Political Committee" Status

Legal Center Files FEC Comments on Unity 08 AOR

The Legal Center and Democracy 21 filed comments with the FEC on Monday regarding an advisory opinion request from Unity 08 (AOR 2006-20). The filing urges the Commission to advise Unity 08 that it is a "political committee" under federal law, and as such subject to all contribution limits and reporting requirements.

Unity 08, however, asks the Commission to declare that the organization is not a "political committee," and that it won't become one until the summer of 2008 when it formally endorses a presidential ticket. Prior to that time, Unity 08 wishes to raise and spend funds to influence the 2008 presidential election without complying with federal campaign finance restrictions. The Legal Center's comments explain in detail why Unity 08's request to operate outside the campaign finance laws should be denied.

Click here to view the Legal Center's comments on AOR 2006-20.

Shays, Meehan File Suit That Seeks To Force The FEC To Promulgate Rules For 527 Groups

On September 14, 2004, Representatives Marty Meehan (D-MA) and Christopher Shays (R-CT), two of the principal sponsors of the Bipartisan Campaign Reform Act, filed suit in the U.S. District Court for the District of Columbia to have the FEC "promulgate legally sufficient regulations to define the term 'political committee.'" Senators John McCain (R-AZ) and Russ Feingold (D-WI) will seek to participate in a lawsuit. The Campaign Legal Center supports the suit and will serve as counsel to the Senators McCain and Feingold in the case.

Click here to view the full press release.

Click here to view the Shays, Meehan complaint.

Reform Groups Urge FEC to Act on Complaints Against 527s

August 31, 2004 -- Three campaign finance reform groups - the Campaign Legal Center, Democracy 21 and the Center for Responsive Politics -

ATTACHMENT 2
Page 1 of 12

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urged the Federal Election Commission to act on their months-old complaints against several 527 groups, despite the agency's refusal to issue new rules for 527s in this election cycle.

The complaints - against The Media Fund, the Leadership Forum, the Progress for American Voter Fund and Swift Boat Veterans for Truth - allege that these groups are violating longstanding federal law by failing to register with the FEC as political committees. Under the Federal Election Campaign Act of 1974, any group that has a "major purpose" of influencing a federal election, and raises or spends more than $1,000 doing so, must register with the FEC and adhere to the rules for such committees. Under those rules, these groups must adhere to "hard money" contribution limits and source prohibitions and must disclose their activities to the FEC.

These 527s are now raising and spending tens of millions of dollars in soft money, with the obvious purpose of influencing the outcome of the coming election.

Click here to view the letter filed with the FEC.

Click here to view the press release.

. . . . . .

Campaign Finance Groups File FEC Complaint Charging "Swift Boat Veterans for Truth" is Violating Federal Campaign Finance Laws

On August 10, 2004, Democracy 21, the Campaign Legal Center and the Center for Responsive Politics today filed a complaint with the Federal Election Commission (FEC) charging that the pro-Republican 527 group, Swift Boat Veterans for Truth (SBVT), is illegally raising and spending soft money on ads to influence the 2004 presidential election.

Click here to see the remainder of the press release.

Click here to read the complaint.

Disqualification of FEC Chairman

On September 27, 2004 campaign finance groups filed a motion calling on the FEC to disqualify the agency's chairman, Bradley Smith, from "any participation" in the FEC's adjudication of a complaint filed on August 10, 2004 by the reform groups against Swift Boat Veterans for Truth (SBVT). The motion cites comments made by Chairman Smith about SBVT in recent public appearances, which "compel his disqualification from all Commission proceedings" in the case.

Click here to view a copy of the motion.

Click here to view exhibits A through E.

Click here to view the press release.

. . . . . .

Senate Governmental Oversight Committee Hearings on the FEC

Senator Trent Lott (R-MS), chair of the Senate Rules Committee, held the first FEC oversight hearing in more than six years on Wednesday, July 14, 2004.

Prior to and during the hearing, Chairman Lott expressed concern with the Commission's failure to act on important policy matters, including during the agency's recent confidentiality of so-called "527 groups" that are raising and spending millions of dollars in soft money to influence the coming election.

At the hearing's conclusion, Senator Lott expressed interest in pursuing legislation to reform the FEC in the next session of Congress.

Click here to read the Legal Center's press release.

Click here to read Trevor Potter's testimony in its entirety.

Click here to view Senator John McCain's testimony.

Click here to view Senator Russ Feingold testimony.

Click here to view Bradley Smith's testimony.
Click here to view Ellen Weintraub's testimony.
Click here to view Trevor Potter's testimony.
Click here to view Benjamin Ginsberg testimony.
Click here to view Robert Bauer's testimony.

Click here to view charts on FEC deadlocked votes.

Campaign Finance Groups File FEC Complaint Charging Progress for America Voter Fund is in Violation of Federal Campaign Finance Laws

On June 22, 2004, Democracy 21, the Campaign Legal Center, and the Center for Responsive Politics filed a complaint with the Federal Election Commission (FEC) charging that the pro-Republican 527 group, Progress for America Voter Fund (PFA-VF), is illegally raising and spending soft money to influence the 2004 presidential elections.

Earlier this year, the three campaign finance groups filed a similar complaint with the FEC against the pro-Democratic 527 groups, America Coming Together (ACT) and The Media Fund, and the pro-Republican group, the Leadership Forum. On June 22, 2004, the three groups filed a second complaint against ACT charging it was engaging in "knowing and willful violations" of the law. The FEC has not acted on these complaints.

Click here to view the complaint filed against Progress for America Voter Fund.

Click here for more in-depth coverage on filings by Democracy 21.

Legal Center Files Complaint against Democratic 527 for knowing and willful violation of Federal law

Pro-Democratic group America Come Together (ACT) knowingly and willfully violated campaign finance laws, according to an FEC complaint filed on June 22, 2004, by Democracy 21, the Campaign Legal Center and the Center for Responsive Politics.

The complaint charges that in its effort to secure President Bush in the November election, the 527 group violated the Federal Election Campaign

Act (FECA) by illegally soliciting funds, spending more money on voter mobilization activities than allowed by law and using soft—rather than hard—money to finance direct mailings. This complaint follows separate allegations filed in January against ACT and other 527s going by the title.

Click here to read the complaint.

Click here to read the press release.

Campaign Legal Center Joins Lawsuit Seeking to Require a 527 to Register as a Federal Political Committee

On May 24, 2004, the Campaign Legal Center joined a lawsuit seeking to overturn the FEC's inaction in a complaint filed in 2000 by the Kean for Congress Committee against a "stealth PAC" 527 organization known as the "Council for Responsible Government" or "CRG." The FEC's General Counsel concluded that the 527 group should have registered and reported as a federal political committee because its "major purpose" was to support and promote federal candidates. Instead, it stated that "there is no indication that [CRG] had engaged in any other type of activity." The FEC deadlocked 3-3 on the Counsel's recommendation so it took no action against the group. The lawsuit, in Federal District Court, seeks judicial review of the FEC's failure to act, a finding by the Court that the refusal to proceed by three FEC commissioners was "arbitrary and capricious," and a reversal of the FEC's action by the Court. The case is particularly significant in light of the Commission's recent decision to delay consideration of the draft regulations on 527 organizations because this case seeks enforcement of already existing law and FEC regulations. The spending by the stealth 527 occurred in 2000, prior to the recent onslaught of 527 groups claiming to influence federal elections with their ads, but similarly claiming they are not subject to the federal election laws.

Click here to read the related press release with links to the complaint and exhibits.

FEC to Delay 527 Rulemaking

On May 19, 2004, the Federal Election Commission yesterday approved the agency general counsel's recommendation to delay consideration of the draft regulations on section 527 organizations for 90 days. This vote followed the 4-2 defeat of the proposed rules drafted by Commissioners Michael Toner (R) and Scott Thomas (D) and almost certainly means any new regulations will not affect 527 activities in the current election cycle.

The proposal would have required Section 527 groups (except for those exclusively focused on state elections, state ballot measure campaigns, or nominations to non-elective offices) to register with the FEC as federal political committees if they spend more than $1,000 on "expenditures" for the purpose of influencing federal elections. For these 527s, such activities would include public communications promoting or attacking federal candidates or political parties, and partisan get-out-the-vote drives in federal election years.

In turn, as political committees registered with the FEC, these Section 527 groups would have to use exclusively "hard money" to finance public communications which promote, support, attack or oppose only clearly identified federal candidates. Moreover, they would have to spend a minimum of 50 percent "hard money" on their partisan voter drive activities that urge the public to register, vote or support candidates of a particular

ATTACHMENT 2
Page 4 of 12

party or associated with a particular issue but do not mention federal candidatites.

To view the Toner/Thomas draft rules, please click here.

To view the statement by Trevor Potter on the FEC's decision to delay, please click here.

To view Senators McCain and Feingold's statement on the FEC's delay, please click here.

To view the joint statement by Bush-Cheney Campaign Chairman Marc Racicot and RNC Chairman Ed Gillespie on the FEC Ruling, please click here.

To view Fred Wertheimer's statement on the FEC decision, please click here.

Apr 28, 2004 - McCain Senate Floor Statement on the FEC and 527 Groups

Congressional Record:

Mr. McCain : Mr. President, I was in Arizona recently, and by chance I watched C-SPAN airing the Federal Election Commission hearing on the issue of 527s. Let me assure my colleagues, it was both eye opening and appalling.

Click here to read Senator McCain's statement in its entirety.

Reformers File Comments on FEC Political Committee Rulemaking

On April 5, 2004 the Campaign Legal Center, Democracy 21, and the Center for Responsive Politics filed comments with the FEC in response to its Notice of Proposed Rulemaking on political committee status.

The comments criticized the "overbroad approach" of the Notice of Proposed Rulemaking -- particularly its incorrect suggestion that the FEC could subject all section 501(c) organizations to a "promote, support, attack or oppose" standard for whether their public communications constitute "expenditures." They urged the FEC instead to focus its ongoing rulemaking on remedying the flawed "allocation" regulations for non-connected political committees and clarifying the rules under which section 527 political organizations must register as political committees with the Commission.

Click here to view the comments filed with the FEC by the Campaign Legal Center, Democracy 21 and the Center for Responsive Politics.

Other Comments:

Click here to view the comments filed by Senators John McCain and Russ Feingold and Representatives Christopher Shays and Marty Meehan.

Click here to view the comments filed by Professor Dan Ortiz, University of Virginia.

ATTACHMENT 2
Page 5 of 12

Click here to view the comments filed by Professor Fran Hill, University of Miami.

RNC and Bush-Cheney Campaign File FEC Complaint Against Kerry Campaign and 527 Groups

On May 31, 2004 the Republican National Committee (RNC) and the Bush-Cheney campaign filed a complaint with the FEC against John Kerry's presidential campaign and a number of Democratic-leaning 527 organizations, including and others.

The complaint alleges that the 527 groups are illegally using soft money to promote Senator Kerry's candidacy for the presidency and seek the defeat of President Bush. Among other things, it argues that the groups have violated federal campaign finance law by failing to register as political committees with the FEC. It also charges that the Kerry campaign and the 527 groups supporting his candidacy have engaged in illegal coordination, citing recent media buys and "six overlaps in personnel between the web of Democratic soft money organizations and the Jaime Kerry for President campaign."

Concerned that FEC enforcement action would not occur before the conclusion of this election cycle due to the nature of the agency's administrative procedures, the RNC and the Bush-Cheney campaign have asked the Commission to dismiss this complaint at its next public meeting -- so that it could immediately seek relief in federal district court.

Click here to view the complaint filed by the RNC and the Bush-Cheney campaign with the FEC.

Reform Supporters Urge FEC to Narrow its Rulemaking to Critical "527 Group" Issues to Avoid Agency "Gridlock" and "Inaction"

In a letter submitted to the FEC on March 16, 2004, the Campaign Legal Center, Democracy 21 and the Center for Responsive Politics expressed serious concern that the Commission is attempting to resolve far too many issues in its expedited rulemaking concerning 527 groups -- and is thus risking gridlock and inaction. To ensure that the rulemaking succeeds and prevents the most serious and prevalent federal campaign finance law circumvention schemes, the reform groups urged the FEC to narrow the focus of the rulemaking to address allocation rules for 527 groups and when such groups should have to register as federal political committees and use hard money for advertising. By contrast, the reformers argued that issues "relating to section 501(c) groups raise a number of questions that do not need to be addressed at this stage and, in fact, need to be resolved by Congress."

Click here to view a copy of the letter submitted to the FEC.

FEC Draft Notice of Proposed Rulemaking on Political Committee Status

On Thursday, March 4th, 2004, the FEC adopted a Notice of Proposed Rulemaking (NPRM) on Political Committee Status by a vote of five to one. Comments on the NPRM are due on April 5th (for those who wish to testify at public hearings on April 14th and 15th) or April 9th (for those who do not

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ATTACHMENT 2
Page 6 of 12

wish to testify).

Click here to view the Political Committee Status NPRM in its entirety.

FEC Adopts ABC Advisory Opinion

On Wednesday, February 18, 2004, the FEC adopted an Advisory Opinion in response to the request from the 527 organization known as "Americans for a Better Country" (ABC). The Advisory Opinion marks the beginning of the FEC's efforts this year to resolve questions about the legality of plans by some 527 organizations to participate in federal election campaigns using extensive amounts of soft money. The Commission will comprehensively address these questions in a coming rulemaking.

The Advisory Opinion adopted by the FEC addressed only 527 political organizations that have registered a federal account with the FEC. In key part, it indicated that these organizations:

* must use exclusively hard money to finance public communications which promote, support, attack or oppose only clearly identified federal candidates;

* may spend a mixture of hard and soft money to finance public communications which promote, support, attack or oppose both clearly identified federal and non-federal candidates; and

* may finance generic voter drives (*i.e.*, voter drives that mention political parties or issues but not candidates) according to the "allocation" formula for such activity appearing in the FEC's regulations.

The Advisory Opinion, however, did not address a number of other important questions which have emerged concerning 527 political organizations with plans to raise and spend soft money to influence federal elections. For example, it did not address whether 527 political organizations which have not registered a federal account with the FEC may spend soft money on public communications promoting or attacking federal candidates - or, more broadly, the circumstances under which 527 organizations must register as federal political committees with the FEC.

The Advisory Opinion also did not address the adequacy of the FEC's existing allocation regulations for "generic voter drive" activity - which can readily be abused to permit 527 political organizations to use an "allocation" ratio that is extraordinarily tilted towards soft money. Indeed, Americans Coming Together (ACT) - a 527 political organization which registered a federal account with the FEC and will focus its efforts on "generic voter drives" - claimed an allocation ratio for such activity of 98 percent soft money and just 2 percent hard money in its year-end filings with the FEC.

The FEC has indicated that it will commence a rulemaking to comprehensively address issues relating to the involvement of 527 political organizations in federal elections. The questions left unresolved by the ABC Advisory Opinion, and potentially even the decision actually made by the Opinion, will be evaluated in that rulemaking. In January, the FEC's Commissioners (by a four-to-two vote) adopted a plan calling for the completion of this rulemaking by May.

The FEC adopted the ABC Advisory Opinion by a vote of four-to-two - with Vice-Chair Ellen Weintraub and Commissioners Danny McDonald, Scott Thomas and Michael Toner voting in favor, and Chair Bradley Smith and Commissioner David Mason in opposition. The final Advisory Opinion

ATTACHMENT 2
Page 7 of 12

adopted by the FEC was based on a draft prepared by Vice-Chair Weintraub, which was itself based on a prior draft proposed by the FEC's Office of General Counsel (with some modifications).

In employing the "promote, support, attack or oppose" standard for spending on public communications by a federal political committee, the final Advisory Opinion rejects the notion that the statutory definition of "expenditure" in federal campaign finance law is limited to "express advocacy" in all contexts. Campaign Legal Center President and General Counsel Trevor Potter applauded this aspect of the Advisory Opinion - while also cautioning that the Opinion "was only the first step in the FEC's review of activity to influence federal elections by 527 political organizations" and urging the Commission to use the upcoming rulemaking "to ensure that the door to unlimited use of soft money for federal elections by partisan 527s is finally closed."

To view the ABC Advisory Opinion, please click here.

To view the various draft opinions and amendments submitted by the FEC's Commissioners and Office of General Counsel, please click here.

To view the reaction of Campaign Legal Center President and General Counsel Trevor Potter to the ABC Advisory Opinion, please click here.

To view a transcript of the FEC's Open Meeting on February 18th on the ABC Advisory Opinion, please click here.

527's and the 2004 Federal Elections

On January 15, 2004 , the Campaign Legal Center joined Democracy 21 and the Center for Responsive Politics in filing a complaint with the FEC alleging that certain newly formed "527 organizations" created to spend soft money on the upcoming federal elections have violated campaign finance law.

According to media reports, these groups -- Americans Coming Together (ACT), The Media Fund and The Leadership Forum -- have been created expressly to spend large sums on partisan voter mobilization drives or "issue advocacy" designed to influence the coming federal elections, and have a major purpose of influencing federal candidate elections. Federal election law requires organizations with such a major purpose, and that spend more than $1,000 to influence federal elections, to register as political committees with the FEC. Federal political committees may only accept "hard money" -- limited contributions from individuals and other federal political committees.

In particular, these groups have set up purportedly "non-federal" accounts which will accept corporate and labor funds and large contributions from individuals -- soft money -- and use them to finance partisan voter drives or "issue advocacy" aimed at the coming federal elections. The complaint alleges that these accounts are, in fact, clearly federal political committees that must be registered with the FEC, and must operate within the normal "hard money" source and amount restrictions. More broadly, it notes that "[i]n pursuing these strategies, these so-called 527 groups are attempting to replace the political parties as new conduits for injecting soft money into federal campaigns."

Click here to view the FEC complaint.
Click here to view Exhibits A-J.
Click here to view Exhibits K-T.
Click here to view Exhibits U-Ee.

ATTACHMENT 2
Page 8 of 12

The issue of permissible activities for "527 organizations" was also placed before the FEC through the filing of an Advisory Opinion request by ACT on January 13, 2004 . The ACT Advisory Opinion request, which has not yet been deemed complete by the Commission, inquires about (and argues for the legality of) ACT's voter mobilization plans. It also suggests that a prior Advisory Opinion request filed by a Republican organization known as Americans for a Better Country (ABC) -- a request inquiring about activities similar to those which press accounts have indicated ACT will undertake -- "does not generally present questions pertinent to ACT's activities."

The ACT request also takes issue with comments filed by the Campaign Legal Center and Democracy 21 in response to the prior Advisory Opinion request from ABC. Those comments argue that corporate and labor treasury funds cannot be "indirectly" expended through 527 organizations for partisan voter drives to influence federal elections which are aimed at the general public. The Center for Responsive Politics separately endorsed this argument.

Meanwhile, the Republican National Committee also filed comments on the ABC request, concurring in the reform groups' conclusion about the impermissibility of "indirect" corporate and labor expenditures for partisan voter drives aimed at the general public. The RNC also expressed concern about large contributions from individuals to 527 organizations undertaking electioneering efforts with the express purpose of electing or defeating federal candidates, as well as the "apparent funneling of foreign money" through some 527s into federal elections.

Click here to view the ACT Advisory Opinion request.

Click here to view the ABC Advisory Opinion request.

Click here to view comments from the Campaign Legal Center and Democracy 21 on the ABC Advisory Opinion request.

Click here to view comments from the Center for Responsive Politics on the ABC Advisory Opinion request.

Click here to view comments from the RNC on the ABC Advisory Opinion request.

Moreover, on January 15, 2004 , the FEC endorsed a plan to commence a rulemaking on the issue of 527's, particularly to examine when such organizations would be treated as federal political committees that must raise and spend only hard money. Four FEC Commissioners -- Chairman Bradley Smith and Commissioners David Mason, Michael Toner and Scott Thomas -- voted in favor of the plan to undertake this rulemaking, while Vice Chair Ellen Weintraub and Commissioner Danny McDonald dissented. Hearings in connection with the rulemaking would be held in April; the objective is to adopt regulations in May.

The FEC was slated to begin considering a draft response to the ABC request - prepared by its Office of General Counsel - at its public meeting on Thursday, February 5. However, it declined to begin considering that draft response until its public meeting on February 19. The Commission had received extensive comments on the draft after it was made public on January 29. According to news accounts, Democratic Commissioners asked for additional time to review these comments before the FEC considered the draft.

The General Counsel's draft response to the ABC request would require political committees to use "hard money" to finance public communications promoting or attacking clearly identified federal candidates. However, although ABC indicated that its purpose is to select Presidents Bush and

ATTACHMENT 2
Page 9 of 12

defeat the Democratic presidential nominee, the draft does not treat ABC in its entirety as a federal "political committee" limited to receiving and spending hard money. Rather, it allows the group to operate a "non-federal" account which would raise and spend soft money to finance at least part of the costs of its generic partisan voter drive activity and communications mentioning particular federal and non-federal candidates.

The Campaign Legal Center , Democracy 21 and the Center for Responsive Politics filed joint comments with the FEC on the draft response to the ABC request. These comments applauded the draft's conclusion that spending by political committees for communications which promote or attack federal candidates must be financed with hard money. In response to comments filed by some section 501(c) non-profit organizations concern that this ruling would apply to their spending, the reform groups emphasized that this was not the case, stating:

> The general counsel's discussion of the "promote support" test is explicitly limited to the communications by political committees . . . Nothing in the opinion purports to apply this standard to section 501(c) nonprofit corporations. The opinion makes no reference at all to such groups, and provides no basis for construing that it would be applicable to such groups.

At the same time, the reform groups criticized the draft for failing to treat ABC in its entirety as a federal political committee limited to raising and spending hard money - noting that the organization's overriding purpose is to influence the election or defeat of particular federal candidates. They also argued that the allocation approach favored by the draft "can readily be 'gamed' in order to work absurd results that will, for instance, allow funding of generic partisan voter mobilization activity to influence federal elections with entirely soft money."

The reform groups applied some of the themes contained in their comments on the draft response to the ABC request in their subsequent comments to the FEC on the ACT Advisory Opinion request. In particular, these comments explained why the "promote, support, attack or oppose" standard properly applied to political organizations would not, under prevailing federal campaign finance statutes and case law, extend to Section 501(c) nonprofits. They also set forth evidence in support of the argument that ACT's "overriding purpose . . . is to engage in partisan voter mobilization activities aimed at the general public, not public communications for the purpose of defeating Republican Bush." Thus, the organization's activities "should be funded exclusively with federal funds."

To view the General Counsel's draft response to the ABC advisory opinion request, please click here.

To view other comments on the General Counsel's ABC draft, please click here.

To view the comments of the Campaign Legal Center, Democracy 21 and the Center for Responsive Politics on the ABC draft, please click here.

To view the comments of the Campaign Legal Center, Democracy 21 and the Center for Responsive Politics on the ACT Advisory Opinion request, please click here.

ATTACHMENT 2
Page 10 of 12

FEC Issues Advisory Opinion 2006-35 on Fundraising for BCRA

On January 12, 2006 , the FEC issued an Advisory Opinion concerning

permissible participation of federal candidates and officeholders in fundraising events, and in written fundraising solicitations, for the Republican Governors Association (RGA). In its request, the RGA indicated that it does not anticipate engaging in "Federal election activity."

Pursuing a framework adopted in a prior Advisory Opinion addressing permissible fundraising for state and local candidates, the Commission indicated that mere attendance at RGA fundraising events (including those that raise non-federal funds) by federal officeholders and candidates would not violate the Reform Act's soft money fundraising restraints. If a federal officeholder or candidate gives a speech at that event generally soliciting funds for the RGA, it must be made clear that he or she is soliciting only federally permissible funds. This clarification can be achieved either through the clear and conspicuous display of written notices at the event, indicating that the federal candidate or officeholder is soliciting only federally permissible funds, or a statement by the federal officeholder or candidate to similar effect. The Advisory Opinion also sets forth rules for RGA written solicitations of funds featuring federal candidates and officeholders, among other things clarifying that RGA solicitation materials in which a federal officeholder or candidate has authorized his or her appearance may not ask for donations from federally impermissible sources or exceeding federal amount limitations (*e.g.* , the solicitation cannot ask for a $50,000 contribution from individuals but then indicate that the federal officeholder is only asking for $5,000 donations from individuals).

The Advisory Opinion also indicated that solicitations of funds by federal officeholders and candidates for a "Conference Account" maintained by the RGA are fully subject to the Reform Act's soft money fundraising restraints. The Conference Account is used to pay for the administrative and events costs associated with the RGA's Annual Conference, as well as Governors Forums conducted throughout the country. In ruling that federal officeholder and candidate solicitations for the Conference Account are subject to the Reform Act's soft money fundraising restraints, the Commission noted the RGA's status as a 527 organization and the Supreme Court's characterization of such organizations as engaging in partisan political activity "by definition" in *McConnell v. FEC* . The Campaign Legal Center had filed comments on this particular issue, urging the Commission to conclude that federal officeholder and candidate solicitations for the RGA's "Conference Account" were in fact subject to the Reform Act's soft money fundraising restraints, in light of the RGA's status as a 527 political organization.

Click here to view Advisory Opinion 2003-36.

Click here to view the request for Advisory Opinion 2003-36.

Click here to view the Campaign Legal Center's comments on drafts of Advisory Opinion 2003-36.

FEC Decision on Leadership Forum and Democratic State Parties Organization

On April 25, 2003, the FEC notified the Legal Center and other public interest organizations of the outcome of their November, 2002 complaint filed against the Democratic National Committee, the National Republican Congressional Committee, and two "shadow groups" associated with the respective national party committees. By a vote of four-to-two, the Commissioners accepted the FEC Office of General Counsel's recommendations that the DNC and two shadow groups had not violated the Bipartisan Campaign Reform Act's national party soft money ban, and that no enforcement action beyond an admonition was warranted with

ATTACHMENT 2
Page 11 of 12

respect to the NRCC. The General Counsel's report, however, cautioned both "affiliated groups" about their future activities and potential consequences under the Reform Act.

Click to read full text

FEC Requests More Information from The Leadership Forum

On December 2, 2002 , the FEC responded to the Leadership Forum's request for an advisory opinion. It asked the Leadership Forum to provide information and documents relating to potential ties to the National Republican Congressional Committee (NRCC), current and planned uses of the $1 million soft money transfer from the NRCC, and other aspects of the organization's activities, plans, and funding. The Leadership Forum must provide such information to the Commission for its advisory opinion request to be eligible for consideration.

Click here to view the FEC's letter in its entirety.

Request for FEC Advisory Opinion from The Leadership Forum

On November 21, 2002 , the Leadership Forum submitted a request to the FEC for an advisory opinion which would indicate that the organization was not directly or indirectly established, financed, maintained or controlled by the National Republican Congressional Committee (NRCC) for purposes of the Bipartisan Campaign Reform Act of 2002.

Click here to view the Leadership Forum's letter in its entirety.

Comments of Legal Center General Counsel Trevor Potter at Press Conference Announcing FEC Complaint Challenging Illegal Soft Money Schemes

Legal Center General Counsel Trevor Potter delivered remarks at a press conference on November 21st, 2002 announcing the filing of a complaint with the FEC challenging schemes by both major political parties to violate the new campaign finance law's soft money restrictions. Attached to the press release containing Mr. Potter's comments and explaining the complaint is a chart listing known 'Shadow Soft Money Committees' and their links to the national parties.

Click here to view the comments in their entirety.

FEC Complaint Filed by The Campaign and Media Legal Center, Democracy 21, Common Cause, and the Center for Responsive Politics Challenging Illegal Soft Money Schemes

On November 21, 2002, the Legal Center joined other public interest organizations in filing a complaint with the FEC challenging schemes by both major political parties to violate the new campaign finance law's soft money restrictions.

ATTACHMENT 2
Page 12 of 12

ATTACHMENT 3

MORE SOFT MONEY HARD LAW Web Updates

The 2nd Edition to the Guide to the New Campaign Finance Law

The Republican Governors' Opinion: More on What Candidat Cannot, Do with "527s"

Posted: 1/13/04

In Advisory Opinion 2003-36, the Federal Election Commission allowed federal candidates, federal officeholders and their agents to raise federally eligible funds in amounts of up to $5,000 per calendar year for "Section 527" organizations—that is, political organizations that are not registered with the FEC. The opinion, issued to the Republican Governors Association and released yesterday, offers new, important and perspectives on the applicable law.

The Basic Idea

We need to begin at the beginning. Under BCRA, federal officeholders, candidates and their agents may raise funds in connection with federal elections only within federal source restrictions, contribution limits and reporting requirements. *Similar rules apply to their fundraising for elections other than those for federal office.* They may raise only funds that fall within the amounts permitted for federal contribution limits and restrictions: i.e. they may not raise corporate or labor money, or exceed a limit of $2,000 per election per candidate, and so forth.

Accepting RGA's representations that it participated in state and local—but NOT federal elections—and conducted no "Federal election activity," the FEC found that fundraising for the RGA was "in connection with any election other than an election for federal office." In other words, federal officeholders, candidates and their agents could raise funds for the RGA outside FEC reporting requirements, but only from individuals and other federally eligible sources, such as federal PACs, and only in increments of up to $5,000 per calendar year. The FEC also allowed them to attend, speak and broadly participate in 527 soft money fundraising events, so long as they either did not actually ask for money, or qualified their solicitations with disclaimers making clear that they were asking only for federally permissible money.

ATTACHMENT 3
Page 1 of 5

The Specifics and the Fine Print

The FEC suggested that federal officeholders and

candidates could engage in a wide range of conduct in connection with 527 fundraising events without triggering BCRA's fundraising restrictions at all. It emphasized that BCRA's soft money fundraising restrictions are triggered only when the candidate, officeholder or an agent actually asks that a contribution be made. A candidate or officeholder "will not be held liable for soliciting funds in violation of [BCRA] ... merely by virtue of attending or participating in any manner in connection with a fundraising event at which non-Federal funds are raised." The candidate or officeholder can participate in the event, or in any of the activities conducted at the event.

Only a Candidate Can Speak for Himself. This is the key element of the FEC's reading of this area of the law: federal officeholders and candidates would not be held liable for the conduct of others outside their control. Officeholder or candidate liability, in the FEC's words, "must be determined by his or her own speech and actions in asking for funds or those of his or her agents...." Thus, for example, a federal officeholder or candidate could give a speech at a 527 soft money fundraising event without asking for funds, and without needing to add a disclaimer, "even though speeches by others solicit such funds." Congressman Jones can be preceded and then followed on the program by speakers urging financial support for the organization, and so long as Jones does not also appeal for funds, his involvement in the program presents no illegal solicitation issue.

But What If He Wants to Ask for Money? What if Jones does wish to ask for money in his portion of the speaking program? The FEC allowed officeholders and candidates to ask for funds while speaking at soft money fundraising events, but only "if written notices are clearly and conspicuously displayed at the event indicating that the covered individual is soliciting only federally permissible funds." How many notices? The FEC does not say. Alternatively, the officeholder or candidate may make an oral disclaimer to that same effect in his or her presentation. The FEC endorsed the following disclaimer:

> "I am asking for a donation of up to $5,000 per year. I am not asking for funds from corporations, labor organizations, or other Federally prohibited sources."

ATTACHMENT 3
Page 2 of 5

This statement would have to be included in his or her remarks, and presumably uttered audibly and not sotto voce or in a foreign language (unless there is reason to believe that the audience, say, at some National Day event, could understand the language spoken). The FEC did stress that he or she need only provide this disclaimer once, and need not make it during "one-on-one discussions" with donors or other people at the event.

The FEC reemphasized, as it has on other occasions, that officeholders and candidates cannot "inoculate a solicitation of non-Federal funds by raising a rote limitation, but then encouraging the potential donor to disregard the limitation." The FEC does not say what it means to "encourage" a potential donor to disregard the stated limitation and contribute soft money. The FEC does not say, and the word "encourage" is not a defined term under the FEC rules. We can assume that if the candidate states that he is only asking for federally permissible funds, only to burst into derisive laughter, or to say "Sure, and I have a bridge in Brooklyn to sell you," that regulators may allege improper "encouragement."

Appearing in Event Materials. A federal officeholder or candidate may also appear on a fundraising invitation or solicitation letter for a 527, but under somewhat more restrictive circumstances.

On the one hand, the FEC said that publicity for an event standing alone would not necessarily constitute a solicitation of funds: "The mere mention of a covered individual in the text of a written solicitation does not, without more, constitute a solicitation or direction of nonfederal funds by that individual." The written materials would actually have to constitute a solicitation for funds" (i.e., by asking for them). Moreover, in keeping with the principle that candidates speak only for themselves and are not judged on the representations of others, the officeholder or candidate must also approve, authorize, agree or consent to being featured in the materials.

But If the Candidate Appears in a Written Solicitation? The FEC made clear that a candidate or officeholder cannot agree to appear in a written solicitation for soft money. A disclaimer of the kind allowed for an event engagement cannot "cure" a soft money solicitation. For example, a fundraising invitation featuring and approved by a federal candidate could not say, "Individuals and Corporations, $1,000," and

ATTACHMENT 3
Page 3 of 5

then be made legal by adding a clause saying that "Senator X is asking for a donation of up to $5,000 per year. He is not asking for funds from corporations, labor organizations, or other federally prohibited sources." The solicitations featuring the candidate must only seek hard money.

This portion of the opinion makes clear that the rules are different for personal speaking engagements on the one hand, and appearances in event solicitations on the other. In the first case, the candidate or officeholder can ask for money, but deal with the "soft money" problem with a "disclaimer," oral or written. In the second, the disclaimer does not effect a cure: a candidate or officeholder cannot consent to appear in a written event solicitation that requests soft money.

And If the Candidate Is Honorary Chair of the Event? The FEC could not agree on "whether the use of a covered person's name in a position not specifically related to fundraising, such as 'honorary chairperson,' on a solicitation not signed by the covered person, is prohibited by the Act."

What If the 527 Is Not Raising the Money for Election-Related Activity? The FEC addressed a matter peculiar to the RGA's status that may have larger import for 527 groups. The RGA told the FEC that it maintained a "conference account" from which it did not engage in any election-related activities, but rather from which it paid for meetings of Republican governors and other public policy activities. It asked whether federal officeholders and candidates could raise unlimited funds for this account regardless of source, on the theory that activities paid from these funds would not be election-related.

The FEC said: No--at least in this case involving the RGA. The FEC noted that the RGA's basic overall purpose as a 527 organization was to engage in partisan political activity, and that the RGA may have treated the conference account as exempt function income under IRS rules. Under these circumstances, BCRA's restrictions apply. However, the FEC left open the possibility that "other legal or factual considerations" might yield a different outcome in a different case, on different facts, involving a different 527.

ATTACHMENT 3
Page 4 of 5

The FEC applied the same reasoning to hold that the RGA's conference account could not accept donations from corporations chartered by Act of Congress, such

as Fannie Mae or Freddie Mac, which are prohibited from making contributions or expenditures in connection with nonfederal elections.

Postscript: The RNC and the RGA Have Gone Their Separate Ways

The FEC assumed without deciding that the RGA had severed its ties from the Republican National Committee before BCRA took effect in November 2002, and that the RGA was not otherwise subject to BCRA's soft money restrictions. This is because the RGA so stated. Had the RGA not so stated, and its relationship to the RNC had been an issue, the analysis would be very different. In this way, BCRA operates to discourage close relationships between different operating units of a political party, such as the RNC and the RGA.

Another, Related Note: FEC Priorities for Rulemaking in 2004 May Include "527s."

The FEC will discuss at its next public meeting, on Thursday, January 15, its rulemaking priorities for the next year. The General Counsel, in consultation with the Regulations Committee, suggests that "the rules...need to be reexamined regarding the determination as to when 527 organizations and other groups become political committees."

Back

ATTACHMENT 3
Page 5 of 5